

For one-way paging services, equal access obligations have no relevance as the call is made from outside the paging network under the control of the calling party. Two-way services will in many cases face the same problems of cellular data services, *i.e.*, return messages will be sent via a series of interconnected or specially designed networks.⁴¹ Customer preselection of interexchange carriers would impair the efficiency and economics of the overall service.

Adoption of equal access requirements for narrowband services would also conflict with their development as wide-area services. Paging systems have evolved over time into regional multi-state systems, reflecting the mobility of their subscribers. Nationwide service is also in high demand, as reflected by the enormous success of the recent auctions for nationwide narrowband licenses recently concluded. Any attempt by the Commission to revert to outmoded divisions between local and long distance services would fly in the face of these market-driven developments and result in greater inefficiencies and higher costs for customers.

III. TARIFF FILINGS FOR LEC/CMRS INTERCONNECTION AGREEMENTS ARE NOT IN THE PUBLIC INTEREST

service without presubscription in recognition of the duplication in facilities such a requirement would impose. Cumbersome preselection burdens on the service would have made no sense, as it would have resulted in the paged party selecting a carrier for the calling party. Calling parties remain free to use their own long distance company to reach the paging facilities.

⁴¹Data services on narrowband networks will be geared to smaller amounts of information, of very limited duration, and not circuit-switched. Preselection of an interexchange carrier to carrier a 2 second message would impose costs which far exceed any benefits.

Under the policies established by the Commission,⁴² LECs are required to offer CMRS providers, on a nondiscretionary and nondiscriminatory basis, interconnection at reasonable rates. Pursuant to "good faith negotiations," cellular carriers have negotiated contracts for the particular type, location, timing, and price for interconnection that meets the needs of their particular systems. This flexibility has served the industry well, resulting in more diversity between competing systems and lower interconnection charges.

Tariffing of interconnection rates, terms, and conditions would force CMRS systems into a common configuration, controlled by LECs that have an insufficient knowledge of the market strategies and technological advancements of the parties seeking interconnection. Costs used to establish such tariffs will be averaged across a LEC's serving area, yet costs for a particular CMRS provider may be higher or lower given its particular configuration and serving area. Tariff filings would need to be updated continually in order to meet the modifications demanded by rapidly developing technology.

Differentiation among CMRS providers would be inhibited by a tariffing requirement, and thus competition would be reduced. Through negotiations, wireless carriers can obtain precisely the functions they need, including the physical point of demarcation, transport and switching elements, intercept announcements, and billing and collection services. The result is a wider range of system architectures and more innovative service packages based upon specific customer demands. Such an outcome is of particular value as multiple new entrants seek to establish themselves in the market

⁴² Second Report and Order 9 FCC Rcd 1411 (1994) See Interconnection Order, 2 FCC Rcd 2916 (1987), and Cellular Communication Systems (Reconsideration), 89 FCC 2d 58, 81, (1982).

with different capabilities, strategies, and technologies than currently exist today. The Commission is strongly urged to promote this differentiation by encouraging nonuniform, contract-based interconnection arrangements in CMRS interconnection to the PSTN.

IV. INTERCONNECTION OBLIGATIONS BETWEEN CMRS PROVIDERS ARE UNNECESSARY TO ACHIEVING THE COMMISSION'S OBJECTIVES OF INTERCONNECTIVITY AND GROWTH OF DIVERSE AND COMPETITIVE MOBILE SERVICES.

CMRS providers offer customers communications mobility and flexibility "anytime, anywhere," through networks designed to complement, not replace the PSTN's ubiquitous fixed services. Because CMRS providers are dependent upon the PSTN for access to all other networks and their subscribers, mandatory cost-based interconnection to the PSTN is the essential element of CMRS interconnectivity and growth. A comparable interconnection mandate which required every CMRS provider to interconnect directly to every other CMRS provider upon demand would create unnecessary regulatory oversight and deter investment in and growth of competing facilities.

Mandatory CMRS-CMRS interconnection is neither necessary nor in the public interest. Under current rules, CMRS providers cannot discriminate in offering interconnection to other CMRS providers.⁴³ Parties who believe their rights have been violated may file a complaint with the FCC pursuant to Section 208 of the Communications Act. The competitive forces within the CMRS market will accomplish the Commission's interconnection objectives more efficiently than regulatory requirements. As thousands of new CMRS carriers seek to grow their markets, direct interconnection among providers will occur where it is economic and beneficial to do so.

⁴³Communications Act of 1934, 47 U.S.C. Sec 202 (a).

Interconnection rights, appropriately applied to "bottleneck" facilities, are easily exploited in competitive markets, where competitors will attempt to acquire proprietary network design information, sensitive cost data, network capacity utilization, and insight into technology under development. Access to such information reduces competition, deters investment and destroys incentives to innovate. By leaving the pace, technical configurations, and financial arrangements of such interconnections to the marketplace, consumer and competitor interests will be best protected.

Because the Commission would best meet its objectives of encouraging vigorous competition, low rates, and diverse services by forbearing from establishing CMRS interconnection obligations, it need not reach the issue of how to structure interconnection rates, terms and conditions. Tariffed offerings⁴⁴ would be completely inconsistent with the diversity of CMRS providers, each with unique network characteristics, service strategies, and specific interconnection requirements. Issues such as mutual compensation are best left to the business judgments of competing service providers, each of whom will each seek the most economic, efficient outcome possible in order to optimize their market positions.

A. The "reseller switch" proposal should be immediately rejected.

The "reseller switch" proposal is one fraught with economic, competitive, and technical problems that far outweigh the alleged benefits of new features to reseller customers.⁴⁵ In essence, the reseller switch concept burdens the competitive cellular industry with the unbundling, cost allocations, colocation issues, reengineering burdens

⁴⁴NPRM/NOI at Para. 131.

⁴⁵NPRM/NOI at Para. 128.

and regulatory layers justified only where there is bottleneck control over "essential facilities." The Commission has concluded that there are no bottlenecks in the CMRS industry, thus warranting immediate rejection of this proposal as anti-competitive.⁴⁶ Moreover, cellular service has been determined to be a discretionary, non-essential service by various states -- even including California.⁴⁷

Interconnection of third party switches to a CMRS network is one that must be left to the discretion of the CMRS provider, bound by the nondiscrimination provisions of the Communications Act. Where an additional switch adds value and is carefully managed so as to prevent any harm to the network, it makes good business sense and will be done without the need for regulatory intervention. It does not follow, however, that it makes good public policy sense to dictate such arrangements; in fact, it distorts those market mechanisms that promote efficiency in pricing and system design.

Technically, the reseller switch is a vague, yet-to-be-designed facility that resellers (virtually unlimited in number) want the right to connect at a yet-to-be identified point in the system, with different proposals possible from each requester. Even in its simplest form, implementation of a blanket policy would pose numerous problems for cellular networks. For example, resellers may seek to interconnect their switches to more than one cellular provider, and shift customers unpredictably from system to system to take advantage of differences in rate charges at different times of the day. Utilization planning would become impossible, and blockage in overburdened networks would increase. Failures in traffic engineering or software design could also result in a significant and sustained disruption of the entire cellular network.

⁴⁶Second Report and Order, 9 FCC Rcd at 1499.

⁴⁷California Public Utilities Commission Decision 90-06-025, Ordering Para. 1.

Competitively, the reseller switch proposal would radically change the incentives which currently exist in the CMRS industry to build state-of-the-art facilities and employ diverse service strategies and network capabilities. By allowing non-facilities-based CMRS providers to go "half-way" and piggy-back off the investments of those companies who built and operate complete systems, the Commission would thwart system expansion and use of new technologies.

This would be especially true if the Commission adopted a policy permitting new PCS licensees to resell off cellular systems for a period of five years.⁴⁸ Such resellers would have every motivation, in exercising their "right" to access, to demand detailed information about a cellular provider's network design, costs, strengths, and weaknesses and exploit them in building their own systems. Indeed such resellers would have the incentive to "play" the regulatory process in order to burden their competitors with uneconomic requests for network modifications or expansions. The adoption of a reseller switch proposal in effect creates an unlimited class of facilities-based providers who may force the development of unneeded capacity while at the same time destroying the incentives of cellular carriers to develop innovative technologies or services, only to have them provided to their competitors on a cost basis. Clearly, such interference with the development of the market would reduce competition and ultimately harm consumers.

The reseller switch proposal has been the subject of extensive hearings in California; expert testimony revealed no reduction in the functions the cellular carrier's

⁴⁸NPRM/NOI at Para. 139. Significantly, the Commission's prior policy -- mandating that the first facilities-based cellular provider resell to the second facilities-based licensee in its market until the second provider was operational -- did not require that the second provider be permitted to attach facilities to the system of the first.

switch would have to perform.⁴⁹ Economically, the reseller switch proposal duplicates facilities of the cellular licensees and materially reduces overall efficiencies. For example, call validation requirements for a reseller-switched call would require more, not less processing time, by the carrier's switch to perform the validation remotely. Call recordation and billing records will simply be duplicated so that there are adequate records to resolve billing disputes. The benefits that facilities-based competitors like PCS will bring to the market in the form of more choices, downward price pressure, and stimulation of demand will not result from a switch attached to an existing network; duplicate switches do not improve voice quality, expand system coverage, or introduce new features valued by wireless subscribers.

Mandatory interconnection of reseller switches raises issues regarding the price of service, cost avoidance, and unbundling issues that regulatory processes are ill-suited to resolve. Any Commission intervention on the pricing of interconnection will result in protracted proceedings which will inevitably lag market developments and divert resources from more productive activities by both industry and regulators. "Reasonable costs" will vary from provider to provider as the CMRS industry is characterized by the wide divergence in the technological capability, capacity, subscriber base, and investment of CMRS competitors. Control over pricing is best left to a free market.

For the foregoing reasons, AirTouch strongly supports the Commission's preemption of state regulation of the CMRS-CMRS interconnection rates and obligations.⁵⁰ The California Public Utilities Commission's recent ruling,⁵¹ which

⁴⁹Investigation of the Commission's Own Motion into the Regulation of Cellular Radiotelephone Utilities, I 88-11-040.

⁵⁰NPRM/NOI at Para. 131.

⁵¹CPUC, (D. 94-08-022), issued August 3, 1994.

requires cellular carriers to permit resellers to purchase unbundled access and interconnect reseller switches at rate elements not to exceed the current overall wholesale price, is fundamentally inconsistent with the federal scheme adopted in the Omnibus Budget Reconciliation Act of 1993.⁵² First, the proposal applies only to cellular carriers, violating the parity principles underlying the federal scheme. Second, it requires ongoing cost allocations for each of a cellular carrier's services in order to arrive at unbundled wholesale rate elements, imposing enormous and unproductive regulatory costs on cellular providers and frustrating the Commission goals for the growth and availability of CMRS. Third, it conflicts with the requirement that rates for new services not be regulated by a state until such rates and regulations are approved in advance by the FCC.⁵³ Finally, it conflicts with the Commission's jurisdiction over the nature and scope of CMRS obligations to interconnect with other carriers.⁵⁴ Policies regarding facilities-based competition in the promising CMRS market must be imposed in a consistent matter for all CMRS providers, regardless of the state in which they plan to offer services. To allow for anything else would result in the balkanization of the CMRS industry--something that is clearly contrary to the goals of the Commission, the mandate of Congress, and the public interest.

V. CONCLUSION


In the conclusion to the NPRM/NOI, the Commission states that "in concept, equal access is in the public interest." This is true as long as the concept is tailored to meet the unique needs of the wireless marketplace. CMRS customers must be free to deal with the long distance carrier of their choice; however, this does not warrant

⁵²Communications Act, 47 U.S.C. Sec. 332(c)(3).

⁵³~~See~~ Section 332(c)(3)(A)

⁵⁴Second Report and Order, 9 FCC at 1514.

imposing limitations harmful to competition in the mobile services and interexchange markets. With regard to CMRS interconnection and interoperability issues, the Commission has in place the appropriate policies which mandate LEC interconnection to CMRS providers without burdening those arrangements with the costs and uniformity of tariff filings. Any proposals mandating access, unbundling, or interconnection among CMRS providers are likely to stifle the development of strong, facilities-based competitors, thus denying consumer benefits in this highly promising industry.


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